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Cambodia: Charges against peaceful demonstrators highlight judiciary's total lack of independence

The trial of two peaceful demonstrators for “incitement”, which began yesterday, two days after their arrest, raises serious fair trial concerns and in particular underscores the total lack of independence of Cambodia’s criminal justice system, Amnesty International has said. Further, the trial – which follows repeated police actions in recent months to stifle the ongoing “Black Monday” peaceful advocacy campaign by human rights defenders in the country – is in violation of the right to freedom of peaceful assembly and freedom of expression.

On 15 August 2016, Tep Vanny and Bov Sophea, two prominent housing rights activists from Boeung Kak Lake, an area of Phnom Penh that was subject to a forced eviction, were arrested at around 6pm at a peaceful vigil. Their arrest followed the arrest of four other housing rights activists, Sar Sorn, Phork Sophin, Nat Sreynak and Nou Sat from the city’s Borei Keila area, another of the capital’s eviction sites, at another peaceful gathering earlier that day. While the four activists from Borei Keila were released later in the same day after thumb-printing documents pledging not to take part in future gatherings, the two activists from Boeung Kak were held for two nights before being charged with “incitement to commit a felony”, an offence which carries a maximum prison sentence of two years.

A Spanish national, Marga Bujosa Segado, who took part in the Boeung Kake Lake gathering, was briefly detained on 16 August and questioned by the Ministry of Interior Immigration Department before being released later that evening. She was re-arrested on 17 August and deported.

The two gatherings were part of the “Black Monday” advocacy campaign that is ongoing in the country. Since 9 May 2016, groups of activists in Phnom Penh have sought to gather peacefully every Monday to protest the ongoing detention of four staff from local human rights organization the Cambodian Human Rights and Development Association (ADHOC) and a former ADHOC staff member who is now the deputy secretary-general of the country’s National Election Committee. The five have been charged with bribing a witness under Article 548 of the Penal Code, but maintain that the charges arise from lawful legal aid provided to a woman, Khom Chandarathy, also known as Srey Mom, who is said to have engaged in an extra-marital affair with opposition leader Khem Sokha. The five were arrested on 28 April. Amnesty International considers the charges against them to be spurious and aimed solely at punishing and intimidating them for peacefully engaging in human rights work.

The latest arrests bring to 39, the total number of arrests of peaceful demonstrators taking part in “Black Monday” events since their inception. Government spokespersons have reasoned that the “Black Monday” protests are part of an effort to bring about a “Colour Revolution” in Cambodia, similar to the popular movements that toppled autocratic regimes in post-Soviet countries and the Balkans in the early 2000s, and have justified arrests on this basis. The Boeung Kak Lake gathering on Monday evening has been described by the government as an illegal “urban rebellion”.

In the previous instances, those arrested were released without charge, usually having been forced to thumbprint documents pledging not to take part in future gatherings as a condition for their release.

Tep Vanny and Bov Sophea were arrested while conducting a vigil condemning corrupt officials, a peaceful gathering that was attended by a small number of people from the Boeung Kak Lake community. While their trial started on 17 August, under Article 47 of the country's Criminal Procedure Code which provides for expedited trial proceedings, it has been delayed until 22 August 2016, and the judge has ordered that they be held in provisional detention pending trial.

The Constitution of the Kingdom of Cambodia guarantees the right to freedom of peaceful assembly, a right also guaranteed by international human rights treaties to which Cambodia is a state party, including the International Covenant on Civil and Political Rights (ICCPR). While Cambodia's Law on Peaceful Demonstrations requires the organisers of demonstrations to inform provincial or municipal authorities in advance of their intention to hold gatherings, the right also protects spontaneous gatherings that are conducted peacefully.

The charges against the two housing rights activists are unfounded and point to an attempt by authorities to discourage and punish participation in "Black Monday" peaceful demonstrations, as part of a wider suppression of peaceful dissent. The charges must be dropped and two activists released immediately and unconditionally.

Further, the practice of obliging peaceful demonstrators to thumb-print documents pledging not to take part in future gatherings as a condition of release, which has been common in Cambodia for years, violates the human right to freedom of peaceful assembly under international human rights law. It is not possible for an individual to sign away his/her internationally protected rights.

Amnesty International is also concerned about violations of their right to a fair trial. Article 47 of the Criminal Procedure Code provides for the immediate trial of the accused if certain requirements are met. This provision violates the right of every person charged with a criminal offence to have adequate time and facilities to prepare a defence, which is guaranteed by Article 14 of the ICCPR. It is noteworthy that Article 47 was invoked in this case despite the fact that the minimum sentence under Article 495 of the Penal Code is six months whereas Article 47 applies in cases where the offence carries a prison sentence of not less than one year. As such, it would appear that Article 47 cannot be triggered in a prosecution under Article 495.

Under Cambodia's immigration law, a foreign national who is resident in Cambodia may be deported by the orders of the Ministry of Interior, on the day the order is made, where he/she participates "in an activity or behaviour dangerous to the national security" of the country. In the case of Marga Bujosa Segado, the Immigration Department of the Ministry of Interior has stated that she was deported for not having a work permit and for participating in the "Black Monday" gathering. Immigration Department official Uk Heisela told local media that Ms Segado cannot be permitted to live in Cambodia "because her acts affect our public security". The right to freedom of peaceful assembly, as guaranteed by Article 21 of the ICCPR, extends to foreign nationals. The participation in a peaceful demonstration cannot be deemed to be an activity that endangers national security.

Background

Recent months have seen a crackdown on the exercise of the human rights to freedom of expression, association, and peaceful assembly in Cambodia, with several human rights defenders and political opposition members being arrested and/or threatened with legal action.

This is not the first time that Tep Vanny and Bov Sophea have been targeted by the authorities for their peaceful human rights activism.

Tep Vanny was among a group of seven women housing rights defenders arrested on 10 November 2014 after a peaceful street protest over flooding in their neighbourhood. The next day, the seven were brought to the Phnom Penh Municipal Court where they were charged with obstructing traffic under Article 78 of the Traffic Law. They were tried, convicted, and each sentenced to one year's imprisonment and fined an equivalent of USD 500. The trial lasted less than three hours. They were released in April 2015 after receiving a Royal Pardon.

Both Tep Vanny and Bov Sophea were among 13 women arrested in May 2012 when 13 activists, including five of those detained this week, were arrested during a peaceful protest in support of 18 families whose homes had been destroyed in forced evictions. They were both sentenced to two-and-a-half years in prison after a summary trial. In June 2012, their convictions were upheld on appeal but the remainder of the sentences were suspended.

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